

COUNTY COUNCIL
OF
HARFORD COUNTY, MARYLAND

BILL NO. 13-23

Introduced by Council President Boniface at the request of the County Executive

Legislative Day No. 13-13 Date May 7, 2013

AN ACT to provide the County Executive or his designee with the authorization to execute, on behalf of Harford County, Maryland, a Municipal Solid Waste Disposal Agreement with Baltimore County, Maryland, in substantially the form attached hereto, in an amount not to exceed \$588,650 in FY 2015 and \$4,000,000 in FY 2016 and then as approved in the Annual Budget and Appropriation Ordinance each year thereafter; to provide an economical long-term solution for the disposal of the County's solid waste and single stream recyclables; and generally relating to solid waste disposal.

As Introduced

By the Council, May 7, 2013

Introduced, read first time, ordered posted and public hearing scheduled

on: June 4, 2013

at: 7 PM

By Order: Pamela Meester, Council Administrator

PUBLIC HEARING

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on _____ and concluded on _____.

_____, Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

1 WHEREAS, Harford County currently operates a recycling transfer station at the Harford
2 Waste Disposal Center in the northern part of Harford County, which was built in 1992 as a
3 temporary facility, has been deemed inadequate to meet current and future needs and does not meet
4 the current minimum industry standards for recycling transfer stations; and

5 WHEREAS, Harford County is in need of a long-term solution to dispose of its solid waste
6 and single stream recyclables at stable and economical rates; and

7 WHEREAS, rather than building additional infrastructure for its long-term solid waste
8 solution, Harford County believes it is more economical to take advantage of infrastructure within
9 close proximity to Harford County boundaries in an adjoining jurisdiction which can be jointly
10 developed to provide a regional solution for both jurisdictions; and

11 WHEREAS, Baltimore County owns and operates the Eastern Sanitary Landfill Solid Waste
12 Management Facility (“ESL”), which includes a solid waste transfer station located on-site that is
13 being used to export municipal solid waste to preserve landfill capacity; and

14 WHEREAS, Baltimore County is constructing and plans to operate a new Materials Recovery
15 Facility in Cockeysville, Maryland which will receive all single stream recyclables collected in
16 Baltimore County, the design and construction costs of which will be financed by Baltimore County;
17 and

18 WHEREAS, Baltimore County wishes to maximize the production of its Materials Recovery
19 Facility and is willing to accept quantities of single stream recyclables above and beyond those
20 generated in Baltimore County; and

21 WHEREAS, Baltimore County is willing to accept the estimated quantities of solid waste and
22 single stream recyclables to be delivered from Harford County; and

23 WHEREAS, Baltimore County requires construction of a new solid waste transfer station at
24 ESL to accommodate quantities of solid waste and single stream recyclables from both Harford and

Baltimore Counties, which will be financed by Baltimore County over a 20-year period, with support from Harford County; and

WHEREAS, the County Executive proposes that Harford County, Maryland enter into a Municipal Solid Waste Disposal Agreement with Baltimore County, Maryland, in substantially the form attached hereto, in an amount not to exceed \$588,650 in FY 2015, not to exceed \$4,000,000 in FY 2016, and then as approved in the Annual Budget and Appropriation Ordinance each year thereafter, and be given the authority to execute such agreement on behalf of Harford County, Maryland; and


WHEREAS, Sections 520 and 524 of the Charter of Harford County, Maryland require that all agreements and payments thereunder which would extend beyond the current fiscal year be authorized by legislative act.

NOW, THEREFORE,
Section 1. Be It Enacted By The County Council of Harford County, Maryland that the County Executive or his designee be, and is hereby, authorized to execute, on behalf of Harford County, Maryland, the Municipal Solid Waste Disposal Agreement with Baltimore County, Maryland, in an amount not to exceed \$588,650 in FY 2015, not to exceed \$4,000,000 in FY 2016, and then as approved in the Annual Budget and Appropriation Ordinance each year thereafter, and the Municipal Solid Waste Disposal Agreement shall provide for a contract term not to exceed 20 years.

Section 2. And Be It Further Enacted that this Act shall take effect 60 calendar days from the date it becomes law.

EFFECTIVE:

The Council Administrator does hereby certify that fifteen (15) copies of this Bill are immediately available for distribution to the public and the press.



Council Administrator

MUNICIPAL SOLID WASTE DISPOSAL AGREEMENT

THIS MUNICIPAL SOLID WASTE DISPOSAL AGREEMENT (this “**Agreement**”) made as of this ____ day of _____, 2013, by and between BALTIMORE COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (“**Baltimore County**”), and HARFORD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (“**Harford County**”). **Baltimore County** and **Harford County** are sometimes referred to individually herein as “**Party**” or collectively as “**Parties**.”

RECITALS

WHEREAS, Baltimore County owns and operates the Eastern Sanitary Landfill Solid Waste Management Facility (“ESL”), which includes a solid waste transfer station located on-site that is being used to export municipal solid waste (“MSW”) to preserve landfill capacity; and

WHEREAS, Baltimore County is constructing and plans to operate a new Materials Recovery Facility (“MRF”) in Cockeysville, Maryland which will receive all single stream recyclables collected in Baltimore County, the design and construction costs of which will be financed by Baltimore County; and

WHEREAS, Baltimore County wishes to maximize the production of its MRF and is willing to accept quantities of single stream recyclables above and beyond those generated in Baltimore County; and

WHEREAS, Harford County currently operates a recycling transfer station at the Harford Waste Disposal Center (“HWDC”) in the northern part of Harford County, which was built in 1992 as a temporary facility, has been deemed inadequate to meet current and future needs, and does not meet the current minimum industry standards for recycling transfer stations; and

WHEREAS, Harford County is in need of a long-term solution to dispose of its solid waste and single stream recyclables at stable and economical rates; and

WHEREAS, rather than building additional infrastructure for its long-term solid waste solution, Harford County believes it is more economical to take advantage of infrastructure that already exists within close proximity to Harford County boundaries in an adjoining jurisdiction which can be jointly developed to provide a regional solution for both jurisdictions; and

WHEREAS, Baltimore County is willing to accept the estimated quantities of solid waste and single stream recyclables to be delivered from Harford County; and

WHEREAS, Baltimore County requires construction of a new solid waste transfer station at ESL to accommodate quantities of solid waste and single stream recyclables from both Harford and Baltimore Counties, which will be financed by Baltimore County over a twenty (20) year period, with support from Harford County.

NOW, THEREFORE, witnesseth that for and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE 1 - DEFINITIONS; RULES OF INTERPRETATION

Section 1.1 Definitions. Capitalized terms used in this Agreement have the meanings set forth in **Schedule A**.

Section 1.2 Rules of Interpretation. For purposes of interpreting this Agreement, except as otherwise expressly provided: (a) references to designated “**Articles**”, “**Sections**”, “**Schedules**” and other subdivisions are to the designated Articles, Sections, Schedules and other subdivisions of this Agreement; (b) references to agreements or contracts include all amendments, modifications and supplements to such agreements or contracts; (c) the headings and the captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions of this Agreement or the scope or intent hereof.

Section 1.3 Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated by this Agreement and, except as expressly provided herein, nothing in this Agreement is intended to confer on any Person other than the Parties and their respective permitted successors and assigns hereunder any rights or remedies under or by reason of this Agreement.

Section 1.4 Severability. If any clause, provision, subsection, Section or Article of this Agreement shall be ruled invalid by any court of competent jurisdiction, then the Parties shall: (a) promptly meet and negotiate a substitute for such clause, provision, section or Article which shall, to the greatest extent legally permissible, effect the intent of the Parties therein; (b) if necessary or desirable to accomplish item (a) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Agreement; and (c) negotiate such changes in, substitutions for or additions to the remaining provisions of this Agreement as may be necessary in addition to and in conjunction with items (a) and (b) above to effect the intent of the Parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid portion did not exist.

Section 1.5 Captions. The the headings or captions used in this Agreement are for convenience of reference only and do not define, limit or describe any of the provisions of this Agreement or the scope or intent hereof.

ARTICLE 2 - DISPOSAL OF MUNICIPAL SOLID WASTE AND SINGLE STREAM RECYCLABLES

Section 2.1 Delivery of Waste and Recyclables to ESL.

(a) Designated Haulers. Deliveries of Waste and Recyclables under this Agreement to ESL for the account of Harford County shall be made by Harford County and/or Harford County's Designated Haulers. Harford County shall compile and provide Baltimore County with information about all commercial haulers licensed by Harford County to deliver Waste and Recyclables to Baltimore County which shall include hauler name and address; hauler identification number; and any other information reasonably requested by Baltimore County. This information shall be updated and supplied to Baltimore County a minimum of once every year; or whenever a hauler's truck list is updated and the County elects to provide the updated information.

(b) Delivery Schedules and Procedures. Deliveries of Waste and Recyclables to Baltimore County hereunder shall be substantially in accordance with written procedures established by mutual agreement of the Parties. These delivery procedures shall include waste transportation and disposal practices, and operating requirements of ESL. The procedures may not unreasonably impede the ability of Harford County to deliver, or cause the inefficient delivery of, all Waste and Recyclables which Baltimore County is obligated to receive from Harford County hereunder, or impair the ability of Baltimore County to receive and dispose of, or arrange for the disposal of, such Waste and Recyclables in accordance with this Agreement. These procedures, and periodic revisions or updates, shall be made available to Harford County, with 5 working days' advance notice before implementation; except that, in the case of an emergency, the notification shall be as soon as possible and in no event, later than one day after implementation. Harford County shall provide any relevant information to the Harford County commercial haulers in a timely manner.

(c) Measurement and Acceptance of Waste and Recyclables at ESL.

(i) Scale Operation. Baltimore County shall operate and maintain road vehicle scales at ESL. Baltimore County shall record all transactions and provide that data to Harford County after the Commencement Date. Baltimore County shall weigh the inbound and outbound vehicles, and complete a weight record for each road vehicle delivering, to the Facilities, Waste or Recyclables generated and collected in Harford County. Notwithstanding the foregoing, tare weights are allowable in lieu of reweighing outbound vehicles that do not haul containers, compactors, or separate type units that are not part of the truck proper.

(ii) Private Vehicles and Licensed Haulers without Credit Accounts. In some circumstances, private residents and businesses of Harford County operating oversized vehicles which require payment of a per ton tipping fee to Harford County (e.g., dump trucks, box trucks, stake body trucks, moving vans) will deliver Waste to ESL. Baltimore County will accept such Harford County customers only if they present a pre-approved temporary Harford County certificate. Baltimore County shall collect the Harford County Fee and forward any such fee and

record of transaction to Harford County in accordance with **Section 4.1** of this Agreement. Notwithstanding the foregoing, in the event deliveries from private vehicles and/or licensed haulers without credit accounts begin to exceed more than four (4) per day, averaged over a one-year period, Baltimore County shall have the right to limit such deliveries.

(iii) Hauler Identification. Each Harford County-licensed truck shall be identified with a Harford County-issued placard with identification number. Harford County shall perform annual inspections of all such delivery vehicles for the purpose of checking for required vehicle identification placards, overall general maintenance, leak-proof tail gate seals, leak-proof bodies, and leaking hydraulic hoses. Vehicle inspections shall be conducted at facilities owned by Harford County.

(iv) Scale Outages. If the permanent road vehicle scales at ESL are not working properly or are being tested, this will constitute a “scale outage” during which time Baltimore County shall note the outage on the documentation of each transaction. Harford County has legislated flat rates for each class and size of vehicle for use during scale outages. The Parties shall establish procedures for estimating tonnages during scale outages for purposes of reporting and Payment. Baltimore County shall use its reasonable good faith efforts to eliminate the cause of the scale outage within twenty four (24) hours.

(v) Testing of Scales. Baltimore County shall inspect and test the road vehicle scales as required by Applicable Law but not less frequently than once per year. Copies of test results and certifications shall be provided to Harford County.

(vi) Incorrect Scales. If any test shows that a scale registers farther above or below the correct reading than permitted by Applicable Law, the charges and calculations based on readings made within thirty (30) days preceding the test shall be corrected by the percentage of inaccuracy found. If a test of the scales has been performed during the preceding thirty (30) days, only the readings and related charges and calculations made after that test shall be corrected on the basis of the subsequent test.

Section 2.2 Provision of Disposal Service by Baltimore County.

(a) Baltimore County shall design and construct a new solid waste transfer station at ESL of sufficient capacity to accommodate solid waste and single stream recyclables from both Harford and Baltimore Counties. Prior to soliciting bids for construction of the facility, Baltimore County shall provide a copy of the the bid documents, including the construction plans, to Harford County for review and comment and Harford County agrees promptly to provide any comments to Baltimore County. During construction of the facility, Baltimore County shall provide Harford County with the opportunity to review and comment upon all change orders, and Harford County agrees promptly to provide any comments to Baltimore County. Notwithstanding the foregoing, final procurement, design and construction authority (including approval of change orders) shall rest with Baltimore County. Upon completion of the facility and close-out of the contract for construction thereof, Baltimore County shall provide

Harford County with an audited statement of the actual project costs related to the transfer station.

(b) Commencing January 1, 2014 and continuing until a date mutually agreed upon by the Parties and estimated to be on or about March 17, 2016, Baltimore County, at its cost, shall pick up and transport all single stream recyclables received within any given work day (Monday through Saturday) from the Harford Waste Disposal Center Recycling Transfer Station in Harford County to the Baltimore County MRF within trailers provided by Baltimore County during normal Harford County working hours. Commencing on or about March 17, 2016, Harford County shall direct delivery of all single stream recyclables to ESL. Commencing on or about March 17, 2016, and continuing throughout the remainder of the term of this Agreement, Harford County shall direct delivery of its Waste to ESL. Baltimore County shall accept Waste and Recyclables and dispose of them on behalf of the County pursuant to this Agreement.

Section 2.3 Transportation and Disposal Services.

(a) Transportation and Disposal Services. Baltimore County shall arrange for transportation and disposal of all Waste and Recyclables delivered to ESL or the Baltimore County Recycling Facility under this Agreement at an appropriate Disposal Facility. The Baltimore County waste transportation and disposal contract shall have provisions for back-up transportation and disposal services. If for any reason Baltimore County's transportation and/or disposal vendors are unable to transport or dispose of Waste or Recyclables, Baltimore County shall, without delay, notify Harford County, and arrange for other means of transportation and disposal of Harford County Waste and Recyclables under the terms and conditions of this Agreement.

(b) Procurement. The transportation and disposal services shall be chosen through a competitive selection process by Baltimore County in accordance with the procurement procedures under Baltimore County Law. Baltimore County shall provide the proposed scope of work and terms and conditions of the solicitation to Harford County for review and comment prior to publication, and Harford County agrees promptly to provide its comments to Baltimore County. Baltimore County shall address all reasonable Harford County comments. As part of the procurement process and prior to award of any contract to a Disposal Facility, Baltimore County shall conduct an investigation of the proposed Disposal Facility exercising all due diligence and shall obtain the following information :

- (i) Disposal permit status;
- (ii) Compliance history;
- (iii) Site condition and operations;
- (iv) Status of any notices of violation, consent orders, repair orders, or fines;

(v) Insurances, letters or credit or other security established to ensure proper closure and post closure care of the Disposal Facility;

(vi) References for the proposed transportation vendor;

(vii) Evidence of the financial stability of transportation vendor including but not limited to an audited financial statement for each of the past two (2) years.

(c) Negotiation and Award. If after receipt of bids, Baltimore County enters into negotiations with any of the bidders, Harford County shall be provided the opportunity to participate and provide input in the negotiation process. Baltimore County shall not unreasonably reject Harford County input and suggestions, however, the award of any contract shall be solely within the purview of Baltimore County.

Section 2.4 Waste and Recyclables Delivered to the Facilities.

(a) Waste and Recyclables Screening Program. Baltimore County shall develop and maintain reasonably appropriate screening programs. Harford County shall cooperate with Baltimore County with regard to the screening programs.

(b) Inspection and Segregation of Recyclables. Baltimore County shall inspect the contents of vehicles delivering Waste under this Agreement to ESL as necessary to ensure that the materials conform to Applicable Law. Harford County shall monitor its own solid waste collection operations to limit, to the extent practicable, the collection of Recyclables mixed with Waste. Baltimore County shall institute reasonable procedures, including inspection procedures, to ensure that loads of Waste with a large percentage (greater than 50%) of source-separated Recyclables are segregated at ESL. Baltimore County shall segregate such loads and shall make reasonable best efforts to identify the truck delivering the load (e.g., placard number, hauling firm, truck number, driver, etc.) and to document the contents by description and photograph. Baltimore County shall provide the relevant information to Harford County so that Harford County may, where possible, provide written notice to the offending hauler. Any loads containing Waste that cannot be reasonably segregated from the Recyclables shall be treated entirely as Waste.

Section 2.5 Waste Restrictions. Harford County's incoming Waste shall be subject to the waste restrictions as applied by the Maryland Department of the Environment ("MDE") as prescribed in Refuse Disposal Permit No. 2008-WMF-0052A, Part III.a, as issued on December 17, 2010 and expiring on December 16, 2015, and all preceding and following permits to the ESL by MDE.

(a) Inspection for Unacceptable Waste. Harford County shall not knowingly deliver, and shall use all legal means reasonably available to prevent the delivery of Unacceptable Waste to ESL by its Designated Haulers. Harford County will institute appropriate procedures, including inspection procedures, to minimize the delivery of Unacceptable Waste to ESL. Baltimore County may inspect all vehicles delivering Waste and Recyclables to ESL, and all Waste and Recyclables delivered, before or after unloading, for the presence of Unacceptable

Waste. In the event that Unacceptable Waste is delivered, Baltimore County shall separate the Unacceptable Waste from the Waste and will contact Harford County, which, in turn, contact the hauler responsible for delivery of the Unacceptable Waste and arrange for its prompt removal. Baltimore County shall first give immediate verbal notice to Harford County of deliveries of Unacceptable Waste, followed by prompt written notice (which may be given by facsimile or email transmission) indicating the time, the source of delivery and identity of the hauling firm and truck number, if known. In the event that Harford County fails promptly to remove, or cause to be removed, the Unacceptable Waste, Baltimore County shall dispose of the Unacceptable Waste and shall bill the cost of such disposal to Harford County.

(b) Hazardous Waste. The Parties acknowledge that ESL is not intended to be used in any manner or to any extent as a facility for the handling, transportation, storage or disposal of Hazardous Waste. Baltimore County and Harford County shall diligently cooperate in enforcing all Applicable Laws and establishing administrative procedures prohibiting the delivery of Hazardous Waste.

(c) Reimbursement for Disposal of Unacceptable Waste. Any Unacceptable Waste accepted by Baltimore County under this Agreement which originated in Harford County shall be disposed of at an appropriate disposal site in accordance with Applicable Law. Harford County shall reimburse Baltimore County for the reasonable and out-of-pocket costs incurred by Baltimore County (without any mark-up or premium) associated with the handling, segregation, storage, transportation and disposal of such Unacceptable Waste within thirty (30) days of receipt by Harford County of an invoice therefor. Harford County shall not be in default under this Agreement due to the delivery of Unacceptable Waste to Baltimore County so long as such delivery was not intentional and Harford County pays such invoiced amounts when due. In the event Harford County disputes any invoiced amount, it shall nevertheless pay the invoiced amount to Baltimore County, but may pursue dispute resolution in accordance with Section 10.2 of this Agreement. Immediately after the resolution of the dispute, Baltimore County shall reimburse to Harford County any amount determined not to have been owed to Baltimore County.

ARTICLE 3 - OPERATION OF THE FACILITIES – GENERAL

Section 3.1 Operation and Maintenance of ESL.

(a) Operation. Following the Commencement Date, Baltimore County shall operate and maintain the Facilities in accordance with this Agreement, Applicable Law, and Prudent Solid Waste Management Practices. Except as specifically provided herein, Baltimore County shall furnish all labor, materials and equipment necessary to manage, operate and maintain ESL.

(b) Operating Standards.

(i) Baltimore County shall operate and maintain all of its equipment, vehicles and property used in the performance of its obligations hereunder in accordance with Applicable Law and Prudent Solid Waste Management Practices.

(ii) All areas used for vehicle access at ESL during normal operating hours, including the designated unloading area, shall be maintained in a drivable and good condition at all times under all weather conditions. Road access maintenance shall include any and all steps reasonably necessary to avoid damage or excessive wear on vehicles on the vehicle access roads and at the designated unloading area including but not limited to the placement of asphalt, crushed aggregates, and other surface treatments as necessary to provide for a smooth, surface that prevents trucks from getting stuck. In the event a vehicle gets stuck through no fault of the driver, Baltimore County shall, with authorization of the vehicle driver, assist in freeing the vehicle.

(iii) ESL and Baltimore County's Transportation and Disposal Contractors shall at all times have sufficient capacity and resources available to handle the projected quantities of Waste and Recyclables from both Parties, including the expected variation of delivery volumes that occurs over the course of any given day and as well as peak volumes reasonably anticipated as the result of some holidays, without causing delays to commercial haulers during the unloading process. Traffic cueing and wait times shall be minimized to the extent practical and reasonable.

(iv) Baltimore County shall obtain and maintain all permits, licenses and governmental approvals that are necessary to perform its obligations under this Agreement.

Section 3.2 Record Keeping Requirements. Baltimore County shall maintain copies of all records required by this Agreement or Applicable Law for a minimum period of five (5) years subsequent to the expiration or termination of this Agreement. Such copies may be maintained in an electronic format. Baltimore County shall maintain on the Premises and available for review at any time, operational and maintenance records for the most recent three (3) years of ESL operations.

Section 3.3 Inspections. Employees authorized by Harford County may visit or inspect ESL at any time during regular hours of operation. During such visit Harford County's authorized employees shall comply with all visitor rules of Baltimore County. Such visitor rules shall not unreasonably interfere with access, for authorized Harford County employees, to all portions of the Premises. Harford County may call upon Baltimore County at any time for an oral review of any matter pertaining to the services provided under this Agreement.

ARTICLE 4 - FEE AND PAYMENTS

Section 4.1 Harford County Fees. Harford County shall directly invoice all commercial haulers and County agencies which have established credit accounts in good standing with Harford County and which deliver acceptable Waste and Recyclables to ESL. Harford County shall provide a list of all such haulers to Baltimore County. On the next Baltimore County business day (Monday – Friday, excluding holidays) after a delivery, Baltimore County will scan and email scale tickets to a designee in Harford County.

Baltimore County shall collect the Harford County Fee from commercial haulers without credit accounts and pre-authorized Harford County residents and businesses with oversized vehicles which are directed to ESL. Harford County shall inform Baltimore County of any changes to its fees at least thirty (30) days before they become effective, and Baltimore County weighmasters shall be fully apprised of said fees. No later than the last business day of each month, Baltimore County shall transmit to Harford County payment of all Harford County Fees collected in the preceding calendar month along with a tabulation of waste quantities received.

Section 4.2 Payment of Fees. In consideration for Baltimore County's obligations and all other services being rendered and obligations assumed by or on behalf of Baltimore County in operating the ESL and providing services for Harford County under this Agreement, commencing on the Commencement Date and throughout the term of this Agreement, Harford County shall pay to Baltimore County the following:

(a) Transfer Station Fee – Harford County shall, over the term of this Agreement, pay an amount equal to Baltimore County's actual debt service on the transfer station building (to be determined after the design and construction of the project is complete) financed via a 20-year bond, which amount shall not exceed \$11,733,000 ("Transfer Station Fee"). The Transfer Station Fee shall be paid in 20 annual installments (each an "Annual Installment"), commencing on July 1, 2014. Each Annual Installment shall equal either the total actual debt service divided by 20 or \$588,650, whichever is less. Harford County, at its sole discretion, may pay more than the Annual Installment and may terminate this Agreement, without penalty and without any additional liability, upon full payment of the Transfer Station Fee.

(b) Waste Transportation and Disposal Fee – Harford County shall pay a cost per ton for all acceptable Waste delivered to Baltimore County by or on behalf of Harford County which shall be equivalent to the cost per ton which Baltimore County is contractually obligated to pay for transportation and disposal of the Waste pursuant to its "Term Contract for Transfer of Commercial Muncicipal Solid Waste and the Processing of Single Stream Recyclables", plus a per-ton host fee, less a pro rata portion of the annual Transfer Station Fee. This fee shall be as follows:

1. \$56 per ton in 2013 dollars for all acceptable Waste delivered to ESL. This cost shall be adjusted periodically as follows:
 - a. The \$56 per ton fee shall be adjusted beginning April 1, 2014, and annually thereafter, by a percentage equal to the increase in the Consumer Price Index as reported by the U.S. Department of Labor, Bureau of Labor Statistics for All Urban Consumers for the Washington-Baltimore, DC-MD-VA-WV Area (All Items Less Energy) comparing the latest available monthly index period to the original Index in effect at time of execution of this Agreement and as indicated in the formula below.

- b. The \$56 per ton fee shall be adjusted upward or downward monthly (monthly defined as the price given for the first week of each individual month which shall apply for the entire month), based on the fuel surcharge table in accordance with the March 29, 2013 cost proposal amending the Baltimore County “Term Contract for Transfer of Commercial Municipal Solid Waste and the Processing of Single Stream Recyclables.”
2. A \$1.40 per ton Baltimore County host fee shall be added to the adjusted \$56 per ton fee. This host fee shall remain constant for the Term of the Agreement.
3. Calculation of Monthly Waste Transportation and Disposal Fee Due Baltimore County. The fee Harford County shall owe to Baltimore County on a monthly basis shall be as follows:

TSF = Transfer Station Fee (Financed Transfer Station Construction Cost as a Fixed Annual Fee)

MTSF = Monthly Transfer Station Fee (TSF divided by 12)

CPI = Total percentage increase in CPI Index compared to index which existed at time of execution of this agreement (Percentage expressed in decimal form)

FS = Fuel Surcharge as determined on the first day of the month (percentage expressed in decimal form)

HF = Baltimore County Host Fee

MT = Monthly Tons of acceptable waste delivered to ESL

Formula for Monthly Payment

$\{[\$56/\text{ton} \times (1 + \text{CPI}) \times (1 + \text{FS}) + \text{HF}] \times \text{MT}\} - \text{MTSF} = \text{Monthly Waste Transportation and Disposal Fee Payment}$

Example

TSF = \$588,650

MTSF = \$49,054.17

CPI = 0.026 (2.6%)

FS = 0.0867 (8.67%)

HF = \$1.40

MT = 8,330 tons

$\{[\$56/\text{ton} \times (1.026) \times (1.0867) + \$1.40/\text{ton}] \times 8,330 \text{ tons}\} - \$49,054.17 = \$482,711.67$

[The per ton rate for April, 2013, using the above formula, would be $\$56 \times 1.0 \times 1.0821 + 1.40 = \61.9976]

Any subsequent contract which Baltimore County enters into for the transportation and disposal of Waste from ESL during the term of this Agreement shall be procured in accordance with **Section 2.3** of this Agreement, and Harford County shall pay the per ton fee included in the contract as its Waste Transportation and Disposal Fee.

Section 4.3 Recyclable Transportation and Disposal Fees. Baltimore County shall provide transportation and disposal of Recyclables delivered by or on behalf of Harford County at no cost to Harford County. Harford County shall not receive any revenue Baltimore County generates from the marketing and sale of its single stream recyclables. Baltimore County shall dispose of any fraction of non-processible or non-recyclable materials received in deliveries of Recyclables received from or on behalf of Harford County at no cost to Harford County.

Section 4.4 Other Fees. Provided Baltimore County has received the prior written permission of MDE, in accordance with its permit, Baltimore County shall, from time to time, accept grit screenings and biosolids from Harford County wastewater treatment plants for disposal at ESL at the prevailing Baltimore County commercial tipping fee.

ARTICLE 5 - COVENANTS AND REPRESENTATIONS

Section 5.1 Baltimore County Covenants. Baltimore County hereby covenants with Harford County as follows:

- (a) Baltimore County has and shall maintain all necessary permits, licenses and approvals required by Applicable Law to perform its obligations under this Agreement;
- (b) Baltimore County shall pay all taxes, assessments, fines and penalties assessed against it with respect to the performance of its obligations hereunder; and
- (c) Baltimore County shall promptly notify Harford County of the occurrence of any facts, events or circumstances known to Baltimore County that could reasonably be expected to adversely affect Baltimore County's ability to receive and dispose of Waste and Recyclables at ESL.

Section 5.2 Baltimore County Representations. Baltimore County hereby represents and warrants to Harford County as follows:

- (a) Baltimore County is a political subdivision duly organized and validly existing under the laws of Maryland;
- (b) The execution of this Agreement and performance by Baltimore County of its obligations under this Agreement do not conflict with and do not constitute a breach of, or an event of default under, any charter provision or bylaw of Baltimore County or any agreement, indenture, mortgage, contract or instrument to which Baltimore County is a party or by which Baltimore County is bound; and upon execution of this Agreement and upon satisfaction of the conditions herein contained, this Agreement shall constitute the valid, legally binding obligation

of Baltimore County, enforceable against Baltimore County in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to, or limiting, creditors' rights generally and the application of general principles of equity;

(c) Baltimore County is not in breach of, or in default under, any permits or any other Applicable Law or any other agreements, which would adversely affect Baltimore County's ability to perform its obligations under this Agreement; and

(d) To the best of Baltimore County's knowledge, ESL and its Disposal Facilities (i) have available capacity sufficient to accept and dispose of the Waste and Recyclables to be delivered hereunder, and (ii) are owned, operated and maintained in accordance with Applicable Law.

Section 5.3 Harford County Covenants. Harford County hereby covenants with Baltimore County as follows:

(a) Harford County shall ensure that its haulers maintain all necessary permits, licenses and approvals required under Section 109-2 of the Harford County Code;

(b) Harford County shall pay all taxes, assessments, fines and penalties assessed against Baltimore County resulting from Harford County's failure to perform any of its obligations hereunder; and

(c) Harford County shall promptly notify Baltimore County of the occurrence of any facts, events or circumstances known to Harford County that could reasonably be expected to adversely affect the Baltimore County's ability to receive and dispose of Waste and Recyclables at ESL.

Section 5.4 Harford County Representations. Harford County hereby represents and warrants to Baltimore County as follows:

(a) Harford County is a political subdivision duly organized and validly existing under the laws of Maryland;

(b) The execution of this Agreement and performance by Harford County of its obligations under this Agreement do not conflict with and do not constitute a breach of, or an event of default under, any charter provision or bylaw of Harford County or any agreement, indenture, mortgage, contract or instrument to which Harford County is a party or by which Harford County is bound; and upon execution of this Agreement and upon satisfaction of the conditions herein contained, this Agreement shall constitute the valid, legally binding obligation of Harford County, enforceable against Harford County in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to, or limiting, creditors' rights generally and the application of general principles of equity; and

(c) Harford County is not in breach of, or in default under, any permits or any other Applicable Law or any other agreements, which would adversely affect Harford County's ability to perform its obligations under this Agreement.

ARTICLE 6 - UNCONTROLLABLE CIRCUMSTANCES

Section 6.1 Effect of, and Changes Necessitated by, Uncontrollable Circumstances.

(a) Effect of Uncontrollable Circumstances. Baltimore County shall not be in default under this Agreement or be liable to Harford County for its failure to perform obligations under this Agreement, if such failure results from an Uncontrollable Circumstance. Baltimore County shall put into place measures reasonably designed to prevent equipment malfunction and damage from forecasted weather events. Baltimore County shall notify the Harford County Representative of any condition caused by an Uncontrollable Circumstance.

(b) Changes Necessitated by Uncontrollable Circumstances.

(i) As soon as possible after an Uncontrollable Circumstance occurring on or after the Commencement Date, Baltimore County shall give the Harford County Representative a statement describing the Uncontrollable Circumstance and its cause (to the extent known to Baltimore County), and a description of the conditions preventing the performance of Baltimore County's obligations.

(ii) Baltimore County shall diligently correct or remove any obstacle to performance resulting from an Uncontrollable Circumstance as soon as reasonably possible.

ARTICLE 7 - TERM; CONDITIONS PRECEDENT

Section 7.1 Term. This Agreement shall be in effect from the date hereof and, unless sooner terminated in accordance with the provisions of this Agreement, shall continue in effect until June 30, 2036. The Parties shall have the right to renew this Agreement for two (2) additional ten (10)-year periods.

Section 7.2 Conditions Precedent.

(a) The obligations of the Parties pursuant to this Agreement shall be subject to the satisfaction of each of the following conditions precedent, and this Agreement shall not be deemed effective until the same have each been satisfied:

- (i) Approval of this Agreement by the Harford County Board of Estimates.
- (ii) Approval of this Agreement by the Harford County Council.

(iii) Approval of an amendment to the Harford County Solid Waste Management Plan by the Harford County Council and the Maryland Department of the Environment that incorporates the proposed changes to the Harford County Solid Waste Management System under this Agreement.

(iv) Approval of this Agreement by the Baltimore County Council.

(v) Approval of an amendment to the Baltimore County Solid Waste Management Plan by the Baltimore County Council and the Maryland Department of the Environment that incorporates the provisions of this Agreement.

Section 7.3 Renewal. At least one year before the end of the initial term or the first renewal period of this Agreement, Baltimore County and Harford County shall negotiate in good faith the terms, conditions and fees for renewal of the Agreement.

ARTICLE 8 - DEFAULT AND TERMINATION

Section 8.1 Events of Default by Baltimore County. Each of the following constitutes an “Event of Default” on the part of Baltimore County:

(a) Baltimore County fails to accept and dispose of all Waste and Recyclables that it is required to accept and dispose of under this Agreement; and

(b) Baltimore County fails to perform any of its material obligations in accordance with this Agreement, unless such failure is excused or justified pursuant to the provisions of this Agreement or otherwise results from the failure of Harford County to perform its obligations in accordance with this Agreement.

Section 8.2 Events of Default by Harford County. Each of the following constitutes an Event of Default on the part of Harford County:

(a) Harford County fails to pay any amounts when due hereunder; and

(b) Harford County fails to perform any of its material obligations in accordance with this Agreement, unless such failure is excused or justified pursuant to the provisions of this Agreement or otherwise results from the failure of Baltimore County to perform its obligations in accordance with this Agreement.

Section 8.3 Remedies on Default.

(a) A Party may terminate this Agreement due to an Event of Default by providing at least forty-five (45) days’ written notice to the other Party, subject to **Section 8.3(c)**; provided, however, that the termination shall not be effective if a Party has cured the Event of Default or has commenced and diligently continues to take reasonable steps to cure the Event of Default until such time as the Event of Default is cured. The right of termination is in addition to, and

not in substitution for any other rights or remedies of the Party exercising the right of termination.

(b) The right of either Party to terminate this Agreement due to an Event of Default by the other Party may not be exercised during the pendency of dispute resolution proceedings initiated pursuant to this Agreement, or pursuant to judicial action that is pending or underway regarding the reasons for or validity of the exercise by such terminating Party of its right to terminate this Agreement for an Event of Default.

(c) In the event of a termination of this Agreement by Harford County during the initial term hereof, Harford County shall pay to Baltimore County an early termination fee equal to the remaining unpaid Transfer Station Fee.

Section 8.4 Termination Upon Early Payment of Transfer Station Fee. At any time following payment in full of the Transfer Station Fee, and upon providing at least forty-five (45) days' written notice to Baltimore County, Harford County may terminate this Agreement. In such event, Harford County shall be under no further obligation to deliver Waste or Recyclables and, except for amounts due as a result of deliveries of Waste and Recyclables made prior to termination and those obligations delineated in **Section 8.5**, shall be under no further obligation to Baltimore County under this Agreement.

Section 8.5 Survival of Certain Rights and Obligations. The rights and obligations of the Parties under **Section 2.5(c)**, **Section 3.2**, **Article 4**, **Article 9** and **Section 10.6** shall survive any termination of this Agreement. No termination of this Agreement limits or otherwise affects the rights and obligations for the payment of money or otherwise, of any Party that have accrued before the date of termination of this Agreement.

Section 8.6 Nonwaiver. No delay or omission by any Party to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the non-breaching Party in its sole discretion. No waiver of any default hereunder, whether by Baltimore County or Harford County shall extend to or shall affect any subsequent default or shall impair any rights or remedies consequent thereon.

Section 8.7 Remedies Non-Cumulative. Any remedies provided for in this Agreement are non-cumulative and may be exercised independently or together, and are without prejudice to any other rights, obligations or remedies of the Parties at law or in equity.

ARTICLE 9 - INDEMNIFICATION

Section 9.1 Indemnification by Harford County. Harford County shall, to the limits of applicable law and subject to available appropriations, (a) protect and indemnify Baltimore County and its officers, directors, agents and employees from and against all actions and liabilities (including, without limitation, reasonable attorneys' fees), and (b) defend Baltimore

County Indemnified Parties in any suit for personal injury to, or death of, any person or persons, or loss or damage to property, in each case to the extent caused by breach of this Agreement by Harford County its agents, contractors or employees in connection with or as a result of this Agreement or the performance of its obligations hereunder, unless in each case the injury, death, loss or damage was the result of the willful misconduct or negligent acts or omissions of one or more of the Baltimore County Indemnified Parties.

Section 9.2 Indemnification by Baltimore County. Baltimore County shall, to the limits of applicable law, protect and indemnify Harford County and its officers, directors, agents and employees from and against all actions and liabilities (including, without limitation, reasonable attorneys' fees), and defend Harford County Indemnified Parties in any suit for personal injury to, or death of, any person or persons, or loss or damage to property, in each case to the extent caused by breach of this Agreement by Baltimore County, its agents, contractors or employees, in connection with or as a result of this Agreement or the performance of its obligations hereunder, unless in each case the injury, death, loss or damage was the result of the willful misconduct or negligent acts or omissions of one or more of Harford County Indemnified Parties.

Section 9.3 Limitation of Liability. The liability of the Parties hereunder shall be subject to and limited in accordance with the State Local Government Tort Claims Act, as amended, subject to appropriation by and approval of the Parties' respective County Councils and the provisions and limitations of the Parties' respective Self-Insurance Funds.

Section 9.4 Notice to Indemnitor. If a claim is asserted against an Indemnified Party for which it is indemnified hereunder: (a) the indemnitor shall be promptly notified; (b) the indemnitor shall be given the opportunity to defend such claim; and (c) the Indemnified Party shall not settle such claim without the prior written approval of the indemnitor.

ARTICLE 10 - MISCELLANEOUS

Section 10.1 Further Assurances. All Parties agree to execute and deliver any instruments and to perform any acts that may be reasonably requested in order to give full effect to the terms of this Agreement. All Parties shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such action as may be reasonably requested by another Party; provided, however, that such actions are not inconsistent with the provisions of this Agreement and do not involve the assumption of obligations other than those which are provided for in this Agreement to carry out the intent of this Agreement.

Section 10.2 Dispute Resolution. The Parties shall attempt to resolve all disputes arising under this Agreement through the dispute resolution mechanism set forth in this Section prior to resorting to judicial resolution. Any dispute may be referred for dispute resolution by giving a written notice to the other Party that a dispute or controversy exists. The notice must include a statement of the matter in controversy and the Party's position with respect thereto. The other Party must within five (5) business days of receipt of such notice deliver a written response to such notice, which must include a statement of its position with respect to the matter in controversy. The notices must be reasonably detailed and, where necessary, based upon

appropriate professional opinion. Within ten (10) business days of the exchange of the notice and response, the Parties shall either resolve the dispute or their respective designees shall meet to resolve the dispute. The Parties shall use good faith efforts to resolve the dispute at the lowest level possible, but shall exhaust all reasonable efforts to resolve the dispute prior to instituting any action in a court of law or equity.

Section 10.3 Modification. Modifications, waivers or amendments of (or to the provisions of) this Agreement shall be effective only if set forth in a written instrument signed by both Parties hereto after all necessary corporate or other action regarding the authorization for such modifications, waivers or amendments has been taken.

Section 10.4 Notices. Except as otherwise provided in this Agreement, any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if and when delivered in person or mailed by certified or registered mail, postage prepaid, or sent by receipted overnight delivery service addressed as follows:

If to Baltimore County:

Director
Department of Public Works
Baltimore County
111 W. Chesapeake Ave
Towson, Maryland 21204
Phone: 410-887-3306
Fax: 410-887-3406

If to Harford County:

Director
Department of Public Works
Harford County
15 N. Bond Street
Bel Air, Maryland 21014-3865
Phone: 410-638-3285
Fax: 410-803-0287

If such notice is sent by telecopy or similar transmission, a copy of such notice shall be sent as provided above. Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party.

Section 10.5 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties hereto. Neither Party shall assign its rights or obligations under this Agreement without the prior written consent of the other Party.

Section 10.6 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Maryland.

Section 10.7 Entire Agreement. This Agreement including the Schedules hereto, constitutes the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, whether oral or written, relating to such subject matter.

Section 10.8 Counterparts. This Agreement may be executed in multiple counterparts with the same effect as if the signature and seals thereto were upon the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement, as of the day and year first written above.

WITNESS:

BALTIMORE COUNTY, MARYLAND, a body
corporate and politic

By:

Fred Homan
Administrative Officer

Date

REVIEWED AND APPROVED:

Edward C. Adams, Jr., P.E., Director
Department of Public Works

APPROVED FOR LEGAL FORM AND SUFFICIENCY*
(Subject to Execution by A Duly Authorized County
Administrative Official and County Council, if Indicated)

OFFICE OF THE COUNTY ATTORNEY

*Approval of Legal Form and Sufficiency Does Not Convey.
Approval or Disapproval of Substantive Nature of Transaction.
Approval is Based Upon Typeset Document. All Modifications Require Re-Approval.

[SIGNATURES CONTINUED NEXT PAGE]

WITNESS:

HARFORD COUNTY, MARYLAND

By:

David R. Craig
County Executive

REVIEWED AND APPROVED:

By:

Timothy F. Whittie, P.E., Director
Department of Public Works

By:

Deborah L. Henderson, Director
Department of Procurement

By:

Kathryn L. Hewitt
County Treasurer

APPROVED FOR LEGAL FORM AND SUFFICIENCY*

By:

Margaret Hartka, Senior Assistant County Attorney
OFFICE OF THE COUNTY ATTORNEY

*Approval of Legal Form and Sufficiency Does Not Convey.
Approval or Disapproval of Substantive Nature of Transaction.
Approval is Based Upon Typeset Document. All Modifications Require Re-Approval.

SCHEDULE A

DEFINITIONS AND INTERPRETATION

As used in this Agreement, the following terms shall have the meanings set forth below:

“Agreement” means this Agreement between Harford County and Baltimore County (including the Exhibits and Schedules to this Agreement), as amended or modified from time to time.

“Applicable Law” means (i) any applicable statute, common law, treaty, rule, code, ordinance, regulation, interpretation, certificate, or order of any governmental authority, whether local, State or Federal (each a “Governmental Authority”), (ii) any license, permit, franchise, certificate or other authorization of, and required registration or filings with any Governmental Authority, or (iii) any judgment, decision, decree, injunction, order or the like of any Governmental Authority.

“Bankruptcy Event” means, with respect to any Person, the (i) filing of a petition or otherwise commencement, authorization or acquiescence in the commencement of a proceeding or cause of action by such Person under any bankruptcy, insolvency, reorganization or similar law, or having any such petition filed or commenced against it, (ii) making an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becoming bankrupt or insolvent (however evidenced), (iv) having a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) generally being unable to pay its debts as they fall due.

“ESL” means the Baltimore County Eastern Sanitary Landfill complex, including solid waste and recycling transfer station, sanitary landfill, scalehouse and truck scales, and all other ancillary site features.

“Event of Default” means an Event of Default as defined in Article 8.

“Facility” or “Facilities” means ESL.

“Fiscal Year” means the County’s fiscal year for accounting purposes, lasting from the first day of July to the 30th day of June of the following calendar year.

“Harford County Fee” means the charge, authorized by Chapter 157 of the Harford County Code, as amended, for the disposal of solid waste at solid waste disposal facilities designated from time to time by Harford County.

“Hazardous Waste” means any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation, “hazardous waste” as defined under the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq., as amended, or any successor legislation, and the regulations thereunder, and “hazardous substance” as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., as amended,

or any successor legislation, and the regulations thereunder, or any other applicable Federal, State or local law and the regulations thereunder, provided, however, that household hazardous waste shall not constitute Hazardous Material. Hazardous Material shall include radioactive materials. If any Governmental Authority now or hereafter having appropriate jurisdiction shall determine that substances which were not, as of the Commencement Date, considered harmful, toxic or dangerous, are harmful, toxic or dangerous, then such substances shall be Hazardous Waste for the purposes of this Agreement as of the effective date of any such determination. For purpose of this Agreement, Hazardous Waste shall not include the minimal Household Hazardous Waste.

“Household Hazardous Waste” means minimal quantities of hazardous materials included in residential waste.

“Indemnified Parties” shall mean the identified County and its officers, directors, agents and employees.

“Payment” means any and all monies owed by Harford County to Baltimore County in return for Services.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Premises” means the property owned by Baltimore County within which the ESL is located.

“Prudent Solid Waste Management Practices” means, as of any particular time, any of the practices, methods and acts (not limited to the optimum practice, method or act) engaged in or generally acceptable to a significant portion of the solid waste management industry at or prior to such time, or any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts and circumstances known at the time a decision was made, could have been expected to accomplish the desired results consistent with good business practices, reliability, economy, safety and expedition.

“Recyclable Transportation and Disposal Fee” means the fee for Recyclables received at ESL payable to Baltimore County by Harford County pursuant to this Agreement, which shall constitute full payment for all capital and operating costs of Baltimore County for receipt, storage, handling, loading, processing, marketing, transportation and disposal of Recyclables delivered by or on account of Harford County.

“Recyclables” means solid waste collected within Harford County and delivered to ESL which meets the requirements of Baltimore County’s single stream recycling program and meets Baltimore County’s material recovery facility acceptance guidelines.

“Refuse Disposal Permit” means the permit issued by the Maryland Department of the Environment stipulating the terms and conditions in which Waste and Recyclables shall be managed at the Facilities.

“Scalehouse” means an enclosed structure constructed between the inbound and outbound truck scales.

“Services” means the work by Baltimore County which provides for the acceptance, processing, transfer and disposal of Waste and Recyclables at ESL collected within Harford County and transported to ESL by or on behalf of Harford County.

“Solid Waste Management Plan” means, as applicable, the Harford County or Baltimore County comprehensive solid waste management plan in effect and approved by the State from time to time.

“State” means the State of Maryland.

“Tax” or “Taxes” means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all federal, state, local, foreign and other income, franchise, profits, gross receipts, capital gains, capital stock, transfer, property, sales, use, value-added, occupation, property, excise, severance, windfall profits, stamp, license, payroll, social security, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a tax return)

“Unacceptable Waste” means any materials and debris which is not normally accepted at ESL in accordance with Prudent Solid Waste Management Practices, or Waste that is not permitted to be accepted at the Facility under Applicable Law, MDE Refuse Disposal Permit No. 2008-WMF-0052A, Part III.a. (as amended from time to time), or Baltimore County Rules and Regulations in effect at the time of the delivery.

“Uncontrollable Circumstance” means an event or circumstance which hinders or prevents Baltimore County from performing one or more of its obligations under this Agreement which event or circumstance was not anticipated as of the date hereof, which is not within the reasonable control of, or the result of the negligence of the Parties and which, by the exercise of commercially reasonable efforts, Baltimore County is unable to overcome or avoid or cause to be avoided, including, but not limited to, flood, storm, strike, earthquake, epidemic, war, riot, civil disturbance, sabotage, act of God, change in law, or any condition or situation which either party reasonably believes imminently endangers or is reasonably likely to imminently endanger life or property or any other cause beyond the control of the Parties.

“Waste” means that portion of materials or debris originating in residential, commercial, institutional, industrial or governmental properties which has been discarded for disposal, having a composition with characteristics such as that collected and disposed of as part of normal

collections of waste materials and debris in Harford County, including, but not limited to: garbage, rubbish, trash, fiber, wood (except as limited below), boxes, rags, cloth, bedding, leather, grass, leaves and brush, yard trimmings, tree limbs, plastics, refuse, beds, mattresses, sofas, carpeting; animal carcasses (other than those resulting from medical research activities or destruction of diseased animals) and combustible construction and demolition debris and other combustible waste, bicycles, tin cans, and other noncombustible residential waste, automobile tires or small vehicle tires, as well as portions of commercial and industrial waste materials or debris which may be disposed as municipal solid waste, excepting, however, Unacceptable Waste, Hazardous Waste and Recyclables.

“Waste Transportation and Disposal Fee” means the fee for Waste received at ESL payable to Baltimore County by Harford County pursuant to this Agreement, which shall constitute full payment for all operating costs of Baltimore County for receipt, storage, handling, loading transportation and disposal of Waste and Recyclables delivered by or on account of Harford County, excluding Unacceptable Waste and Hazardous Waste.